

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Royce International Broadcasting Company,
Assignor
and
Entercom Communications, Corp., Assignee
Application for Consent to the Assignment of
License of Station KUDL(FM), Sacramento,
California
File No. BALH-20021120ACE
Facility ID No. 57889

ORDER ON RECONSIDERATION

Adopted: January 19, 2016

Released: January 19, 2016

By the Chief, Media Bureau:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration (Petition) filed on October 19, 2015, by Royce International Broadcasting Company (Royce). The Petition seeks reconsideration of the Commission's September 17, 2015, Memorandum Opinion and Order, which dismissed in part and denied in part Royce's Application for Review (AFR). In this Order on Reconsideration, we dismiss the Petition pursuant to Section 1.106(p)(1) of the Commission's Rules (Rules).

2. The AFR sought review of a Media Bureau (Bureau) decision denying reconsideration of the staff's grant of the captioned application (Application) for consent to the assignment of license of Station KUDL(FM), Sacramento, California (Station), from Royce to Entercom. In the Bureau Decision, the Bureau held that: (1) the "grandfathering" provisions of the 2002 Ownership Order applied to this

1 Formerly KWOD(FM).

2 Entercom Communications Corp. (Entercom) filed an Opposition to Petition for Reconsideration (Opposition) on November 3, 2015, to which Royce replied (Reply) on November 16, 2015.

3 Royce International Broadcasting Company, Memorandum Opinion and Order, 30 FCC Rcd 10556 (2015) (MO&O).

4 47 CFR §§ 1.106(p)(1).

5 See Royce International Broadcasting Company, Letter Order, 20 FCC Rcd 13720 (MB 2005) (Bureau Decision).

6 See 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13692, para. 187 (2003) (Ownership Order). On that same day, June 2, 2003, the Commission announced by Public Notice that certain "pending" applications would be processed under the new rules. Media Bureau Announces Processing Guidelines for Broadcast Station Applications, Public Notice, 18 FCC Rcd 11319, 11319 (2003).

transaction that was consummated prior to the adoption of the new rules; and (2) Royce's reliance on Section 1.65 of the Rules⁷ to support its allegation that the Application was still "pending" and should be processed under the revised rules was "misplaced." The *MO&O* affirmed the *Bureau Decision*.⁸

3. In its Petition, Royce argues that: (1) The *MO&O*'s issuance violated Section 155(d) of the Communications Act of 1934, as amended (Act), which in turn violated Section 706 of the Administrative Procedure Act (APA) because it took the Commission almost 10 years to rule on the AFR;⁹ (2) the "entire proceeding" underlying the *MO&O* should be governed by *Kidd v. FCC (Kidd)*¹⁰ in which the Court of Appeals for the District of Columbia Circuit ruled in 2005, but after the AFR pleading cycle had closed, that the Commission is not obliged to accommodate a state court decision if it is contrary to Commission policy, thus presenting a "similar situation" that Royce has heretofore been "unable to argue";¹¹ and (3) in the *MO&O*, the Commission erred in rejecting as procedurally barred three arguments regarding whether the Bureau's grant of the Application was in accordance with the Commission's multiple ownership rules.¹² Royce argues that the grant of the Application should be rescinded and vacated and that the Station's license be returned to Royce.¹³

4. In its Opposition, Entercom argues that: (1) Section 155(d) of the Act, as well as Section 706 of the APA, are inapplicable; Royce inaccurately characterizes these rule sections as mandates requiring Commission action in all circumstances by a date certain;¹⁴ (2) *Kidd* is inapposite because the *Kidd* transaction implicated the Commission's rule against a seller retaining a reversionary interest in a license; (3) Royce mischaracterizes the state court order at issue;¹⁵ and (4) the *MO&O* correctly dismissed three

⁷ 47 CFR § 1.65. Section 1.65 of the Rules reads, in pertinent part:

For purposes of this section, an application is "pending" before the Commission from the time it is accepted for filing by the Commission until a Commission grant or denial of the application is no longer subject to reconsideration by the Commission or to review by any court. (emphasis supplied).

⁸ *MO&O*, 30 FCC Rcd at 10557, para. 4.

⁹ *Id.* at 1. Royce cites numerous cases in which federal appellate courts have recognized the principle that "justice delayed is justice denied." See *Gaur v. Gonzales*, 124 Fed. Appx. 738, 743, para. 24 (3rd Cir. 2005); *Rohr Industries, Inc. v. Washington Metropolitan Area Transit Authority*, 720 F.2d 1319, 1327, para. 21 (D.C. Cir. 1983); *U.S. v. Hastings*, 847 F.2d 923 (1st Cir. 1988); *U.S. v. Bert*, 2015 WL 5254882, Slip Op. at 10 (2nd Cir. 2015); *Willis v. Sullivan*, 931 F.2d 390, 404, para. 52 (6th Cir. 1991); *SEC v. First American Bank & Trust Co.*, 481 F.2d 673, 676 n.3 (8th Cir. 1973). Petition at 5.

¹⁰ 427 F.3d 1 (D.C. Cir. 2005).

¹¹ Petition at 2-3, 6-7.

¹² *Id.* at 8. In the AFR, Royce argued for the first time that: (1) the Bureau "unlawfully" determined that the court's stay of the rules adopted in the *Ownership Order* applies in this case, see *Prometheus Radio Project, et al. v. F.C.C.*, No. 03-3388, slip op. at 3 (3d Cir. Sept. 3, 2003) (*per curiam*); (2) the Bureau, by not addressing Royce's Section 1.65 "pending" argument, violated 5 U.S.C § 557(c) of the Administrative Procedure Act which requires that any ruling in an adjudicatory decision "show the ruling on each finding, conclusion or exception presented"; and (3) the Bureau, by failing to apply Section 1.65(a) as well as the application processing guidelines established in the *Ownership Order*, violated the fundamental tenet that the Commission must follow its own rules.

¹³ *Id.* at 9.

¹⁴ Opposition at 2.

¹⁵ *Id.* at 5.

arguments raised for the first time in the AFR because they could and should have been first presented to the Bureau.¹⁶

5. In Reply, Royce argues that the Petition is appropriate pursuant to Section 405(a)(2) of the Act and Section 1.106(b)(2) of the Rules because *Kidd* was decided after the end of the pleading cycle on Royce's AFR.¹⁷ In addition, Royce argues that *Kidd* is applicable here because this case, like *Kidd*, involves an order of a California state court ordering an FCC licensee to, in effect, turn over its license to a party that had brought suit.¹⁸

II. DISCUSSION

6. Commission rules prescribe limited circumstances under which a party may seek reconsideration of a Commission denial of an application for review. Pursuant to Section 1.106(p)(1), the staff may dismiss or deny any petition for reconsideration of a Commission action that “plainly does not warrant Commission consideration,” if such petition “[f]ail[s] to identify any material error, omission, or reason warranting reconsideration.”¹⁹

7. As an initial matter, Royce fundamentally mischaracterizes Section 155(d) of the Act as mandating Commission action within three months. The Commission has held that this statutory provision merely sets a “non-mandatory” “objective.”²⁰ Further, Royce “has not shown prejudice by establishing that the result reached [in the *MO&O*] would likely have been different if action had occurred sooner,” nor has Royce shown that the delay extinguished its appellate rights.²¹ Accordingly, we dismiss this argument pursuant to Section 1.106(p)(1) of the Rules.

8. Next, we find that *Kidd* is inapposite to this proceeding and that Royce badly mischaracterizes the challenged state court order. Specifically, the *Kidd* court vacated a license assignment grant because the Commission had failed to explain how the transaction complied with the rule prohibiting seller-retained reversionary interests.²² In contrast, the challenged Interlocutory Judgment merely ordered “the electronic filing . . . of FCC Form 314 *in accordance with applicable FCC policies and rules.*”²³ The state court did not, as Royce claims, “order the FCC to grant the . . . [A]pplication.”²⁴ In any event, both the Bureau and the Commission subsequently found that the

¹⁶ *Id.* at 6.

¹⁷ Reply at 2. *See also* 47 U.S.C. § 405(a)(2) and 47 CFR § 1.106(b)(2).

¹⁸ *Id.*

¹⁹ 47 CFR §§ 1.106(p)(1). *See also Amendment of Certain of the Commission's Part 1 Rules of Practice and Procedure and Part 0 Rules of Commission Organization*, Report and Order, 26 FCC Rcd 1594, 1606, para. 27 (2011).

²⁰ *See Pacific and Southern Company, Inc.*, Memorandum Opinion and Order, 11 FCC Rcd 8503, 8506, para. 11 (1996) (also noting that in the license renewal context compliance with this “objective” “is an impossibility”).

²¹ *Id.* at 8507, para. 11.

²² *See Kidd*, 427 F.3d at 6, para. 16.

²³ *See Application at Attachment 1 (Entercom Communications Corp. v. Royce International Broadcasting Corporation, Royce International Broadcasting Company, Edward R. Stoltz II, and DOES 1-10, Case No. 99AS04202, Interlocutory Judgment (without attachments) (Sup. Ct. Cal., Sacramento County) at 4 (emphasis supplied).*

²⁴ Petition at 7.

Application complied with all pertinent statutory and regulatory requirements. We therefore also dismiss this argument pursuant to Section 1.106(p)(1) of the Rules.²⁵

9. Finally, regarding Royce's contention that the Commission acted arbitrarily in dismissing on procedural grounds three arguments that Royce claims were "subsumed within" the primary issue of whether the Bureau correctly processed the Application in accordance with the Commission's multiple ownership rules,²⁶ it is clear that Royce never presented any of these specific arguments to the Bureau. Thus, they were properly dismissed pursuant to Section 1.115(c) of the Rules.²⁷ It is the Commission's obligation to rule only on allegations actually made; it is not the Commission's obligation to flesh out or embellish arguments inexpertly made by petitioners.²⁸ Accordingly, we also dismiss this argument pursuant to Section 1.106(p)(1) of the Rules.

III. ORDERING CLAUSE

10. ACCORDINGLY, IT IS ORDERED that, pursuant to authority contained in Section 1.106(p) of the Commission's Rules, the Petition for Reconsideration filed on October 19, 2015, by Royce International Broadcasting Company, IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

²⁵ Because we dismiss Royce's *Kidd* argument pursuant to 47 CFR § 1.106(p)(1), we need not reach the issue whether the release of *Kidd* constituted a "new fact or changed circumstance" under 47 CFR § 1.106(b)(2)(i). We note, however, that the Bureau has previously concluded that dismissal pursuant to Section 1.106(b)(3) is appropriate when the alleged new facts are not material to the matters at issue in the application proceeding. *See, e.g., Emmis Radio License, LLC*, Order on Reconsideration, 29 FCC Rcd 9129, 9131, para. 4 (MB 2014) (Bureau finds that petitioners' citation to irrelevant Commission orders failed to demonstrate changed circumstances warranting reconsideration of a Commission *Memorandum Opinion and Order* pursuant to Section 1.106(b)(2)(i)).

²⁶ Petition at 7.

²⁷ 47 CFR § 1.115(c).

²⁸ *See, e.g., Tama Radio Licenses of Tampa, Florida, Inc.*, Memorandum Opinion and Order, 25 FCC Rcd 7588, 7589, para. 2 (2010) ("The Commission is not required to sift through an applicant's prior pleadings to supply the reasoning that our rules require to be provided in the application for review."); *Red Hot Radio, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 6737, 6745 n.63 (2004) ("Our rules do not allow for a 'kitchen sink' approach to an application for review, rather the burden is on the Applicant to set forth fully its argument and all underlying relevant facts in the application for review.").